

Below is an Opinion of the Court.


ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)
JACK F. LANE and MARILYN K.) Bankruptcy Case No.
LANE,) 12-36873-elp7
Debtors.) MEMORANDUM OPINION

This matter came before the court on debtors Jack F. Lane and Marilyn K. Lane's motion, filed on their behalf by Donna M. Hines pursuant to a power of attorney, to have Hines appointed as "next friend" for debtors as provided by Fed. R. Bankr. P. 1004.1. The United States Trustee ("UST") objected. The court held a hearing on October 9, 2012, at which time the UST raised concerns about the potential for abuse in the "next friend" process.

Fed. R. Bankr. P. 1004.1 allows "a representative, including a general guardian, committee, conservator, or similar fiduciary," to file a voluntary petition on behalf of an incompetent person. The rule further provides that

[a]n infant or incompetent person who does not have a duly appointed

1 representative may file a voluntary petition by next friend or
2 guardian ad litem. The court shall appoint a guardian ad litem for
3 an infant or incompetent person who is a debtor and is not otherwise
represented or shall make any other order to protect the infant or
incompetent debtor.

4 Rule 1004.1 is patterned after Fed. R. Civ. P. 17(c), which applies to
5 adversary proceedings pursuant to Fed. R. Bankr. P. 7017. That rule
6 provides that an incompetent person may sue "by a next friend or by a
7 guardian ad litem" if the incompetent person does not have a duly
8 appointed representative, and provides that "[t]he court must appoint a
9 guardian ad litem -- or issue another appropriate order -- to protect a
10 minor or incompetent person who is unrepresented in an action."

11 Case law regarding the appointment of a next friend is of limited
12 utility in establishing the procedure and the legal standard to apply. I
13 conclude that a next friend may be appointed if the debtor is financially
14 incapable (a standard drawn from Oregon's conservatorship statute, ORS
15 125.400), the movant knows about the debtor's financial situation, and is
16 dedicated to the debtor's best interests.

17 The court shares the concerns raised by the UST about the potential
18 for abuse that exists with regard to motions to appoint a next friend
19 under Fed. R. Bankr. P. 1004.1. Therefore, any future motion to appoint
20 a next friend must comply with the following procedure and make a showing
21 that the debtor(s) are financially incapable, and that the person seeking
22 appointment knows the debtor(s)' financial situation and is dedicated to
23 the debtor(s)' best interests.

24 First, any petition filed by a next friend must be accompanied by a
25 motion to be appointed as next friend.

26 Second, the motion to be appointed as next friend must be

1 accompanied by the following documents:

2 1. A copy of the power of attorney giving the movant authority to
3 act for the debtor(s), if any.

4 2. A declaration from the person seeking to be appointed as "next
5 friend" providing the following information:

6 A. the movant's name and relationship to the debtor(s);

7 B. whether the debtor(s) have a duly appointed representative
8 under state law;

9 C. the reason why appointment of a next friend is necessary;

10 D. an explanation of why appointment of the movant as next
11 friend would be in the debtor(s)' best interest;

12 E. the fee, if any, the next friend will charge the debtor;

13 F. the movant's criminal, financial, and professional
14 history;

15 G. the movant's competence to handle the debtor(s)' financial
16 affairs, including the movant's knowledge about the debtor(s)' financial
17 affairs;

18 H. whether the movant has any interest, either current or
19 potential, in the debtor(s)' financial affairs; and

20 I. whether any of the debtor(s)' debts were incurred for the
21 benefit of the proposed next friend.

22 3. A letter from the debtor(s)' physician(s) regarding the
23 debtor(s)' ability to conduct their own financial affairs.

24 4. A letter from the debtor(s)' care giver, if any, regarding the
25 debtor(s)' ability to conduct their own financial affairs.

26 Third, the movant must give notice of the motion to be appointed as

1 next friend to:

- 2 1. all creditors;
- 3 2. the United States Trustee;
- 4 3. any governmental entity from which the debtor is receiving any
- 5 funds; and
- 6 4. the debtor(s)' closest relative, if known.

7 Fourth, the court will hold a hearing on the motion to be appointed
8 as next friend, which shall occur before the 341(a) meeting, if possible.
9 The person requesting to be appointed as next friend shall appear and
10 testify at the hearing, either in person or telephonically.

11 The fact that the person seeking appointment as next friend is the
12 debtor(s)' spouse or other close relative who might have an interest in
13 the debtor(s)' financial affairs will not necessarily be a basis for
14 denying the request.

15 CONCLUSION

16 The court will apply these procedures to all future motions to
17 appoint a next friend to file a bankruptcy petition for a debtor.
18 Failure to follow these procedures may result in denial of the motion to
19 appoint a next friend and dismissal of the bankruptcy case.

20 ###

21 cc: Paul B. Heatherman
22 M. Vivienne Popperl
23
24
25
26